

- (1) Whether claimant sustained personal injury by accident arising out of and in the course of employment with respondent.
- (2) Whether claimant provided respondent timely notice of accident.
- (3) Whether the Administrative Law Judge properly considered medical records proffered by claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing, the Appeals Board finds as follows:

The Preliminary Hearing Order of the Administrative Law Judge should be affirmed.

(1) The Appeals Board agrees with the Administrative Law Judge that claimant has proven she sustained personal injury by accident arising out of and in the course of her employment with respondent during the period of December 23, 1994 through January 31, 1995, as alleged. During that period claimant unpacked airplane parts weighing up to fifty (50) pounds and worked outside the medical restrictions and limitations placed upon her by Dr. Melhorn, an orthopedic surgeon who had previously treated claimant for various conditions related to overuse syndrome. The Appeals Board finds claimant sustained injury each and every work day during the period alleged.

(2) The Appeals Board finds claimant gave notice of accident to respondent on December 23, 1994 when she reported her symptoms to the company nurse and requested medical treatment. At that time respondent was advised claimant believed her work activities were causing her symptoms. Therefore, claimant has satisfied the requirement of providing notice of accident as required by K.S.A. 44-520.

(3) The Administrative Law Judge properly considered claimant's medical reports. A review of the Division records indicates the medical records from Dr. Melhorn were forwarded to the Division as required by statute. The Appeals Board finds the Administrative Law Judge has the discretion at preliminary hearing to admit other medical records and, thus, did not exceed his authority in so doing.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark entered in this proceeding on April 11, 1995, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, Kansas
Clifford K. Stubbs, Lenexa, Kansas
John D. Clark, Administrative Law Judge
David A. Shufelt, Acting Director